IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01/09/2004

CORAM

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

C.R.P. (PD) No. 1545 of 2004
and
C.M.P. No. 14370 of 2004

1. The Director of School Education
College Road, Nungambakkam
Chennai - 600 006

2. The Collector
Salem - 1

3. The Chief Educational Officer
Collectorate Compound
Salem - 1 .. Petitioners

-Vs-

G. Venkatesan .. Respondent

Revision Petition under Article 227 of the Constitution of India
against the Judgment and Decree dated 17-03-1997 made in O.S. No. 489 of
1990 on the file of the Second Additional District Munsif Court, Salem.

!For Petitioners : Mr. Senthilnathan, Special Govt.
Pleader (Civil Suit)

^For Respondent : --

:ORDER

Heard the counsel for the petitioners.

2. It is not in dispute that the respondent herein has filed the
suit O.S. No. 489 of 1990 on the file of the Second Additional District
Munsif, Salem for a declaration to declare his date of birth as 07-04 -1961
instead of 20-12-1959 entered in the S.S.L.C. Book by mistake, in which the
petitioners were defendants.

3. It is seen from the records that though the petitioners herein
were served with notice, but they have not chosen to contest the suit.

Ultimately, the said suit was decreed as prayed for on 17-03-1997. Without filing any appeal against the said Judgment and decree in O. S. No. 489 of 1990, after lapse of seven years, the petitioners have filed this Civil Revision Petition, under Article 227 of the Constitution of India.

4. No doubt, Article 227 of the Constitution is not original proceeding like Article 226. Against any decision rendered under Article 22 6 by a single judge of the High Court an appeal before the division bench is available. Whereas, Article 227 confers extraordinary jurisdiction to High Court and gives it the powers of superintendence over all the subordinate Courts and Tribunals within the State.

5. The material part of Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 except that the power of superintendence has been extended by this Article to Tribunals as well. Section 107 of Government of India Act was similar in terms to Section 15 of the High Courts Act, 1861 which gave a power of judicial superintendence to the High Court apart from and independently of the provisions of other laws conferring revisional jurisdiction on the High Courts. The Apex Court in (Umaji Keshao Meshram and others Vs. Smt. Radhikabai and another) AIR 1986 Supreme Court 1272 Para-102 it was held as follows:-

"102. ....In Ahmedabad Mfg. & Calico Ptg. Co's case this Court said (at pages 193-4) (of 1973 (1) SCR 185: at p.1603 of AIR 1972 SC 1598)

'Article 227 of the Constitution no doubt does not confer on the High Court power similar to that of an ordinary court of appeal. The material part of this Article substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 except that the power of superintendence has been extended by this Article to Tribunals as well. Section 107 according to preponderance of judicial opinion clothed the High Courts with a power of judicial superintendence apart from and independently of the provisions of the other laws conferring on them revisional jurisdiction. The power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate Courts and Tribunals within the bounds of their authority....."

6. The High Court can interfere under Article 227 of the Constitution when there is erroneous assumption of jurisdiction or acting beyond the jurisdiction, refusing to exercise jurisdiction and error of Law apparent on the face of record, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arrived at a finding which is perverse or based on no material or resulted in manifest injustice. The Hon'ble Supreme Court in (Achutananda Baidya Vs. Prafullya Kumar Gayen and others) AIR 1997 SC 2077 para-11 it was held thus:-

"11. If the evidences on record in respect of a question of fact is not at all taken into consideration and without reference to such evidence, the finding of fact is arrived at by inferior Court or Tribunal, such finding must be held to be perverse and lacking in factual basis. In such circumstances, in exercise of the jurisdiction under Article 227, the High

Court will be competent to quash such perverse finding of fact."

7. Normally, when there is another alternative remedy open to the party, which is effective and adequate to meet the needs of the case, the High Court will not use its extraordinary powers under Article 227 of the Constitution. Other adequate and comprehensive remedy by way of appeal to appellate Court is available, but not availed of, interference under Article 227 is incorrect.

8. One of the considerations which are also weigh with the High Court in the exercise of its jurisdiction under Article 227 is whether the party seeking its assistance has been reasonably diligent in the pursuit of his remedy. If he has been guilty of undue delay in coming to the High Court for relief, the High Court can refuse to entertain.

9. As mentioned above, in the case on hand, alternative and effective remedy of appeal has not been availed of by the petitioners. The present revision has been filed in the year 2004 after lapse of seven years. When law of limitation barring appeal and the delay not having been satisfactorily explained, the length of delay and petitioners act in the interval affecting the balance of justice, conduct of making delay by the petitioners equivalent to waiver of re-altering the position of the respondent by granting the relief would be unreasonable. Hence, I am of the view that the petitioners have not been reasonably diligent in the pursuit of their remedy. When the petitioners failed to avail of the alternative and effective remedy by their act and conduct, discretionary remedy under Article 227 of the Constitution cannot be granted.

10. Hence, the civil revision petition is liable to be dismissed and accordingly, it is is dismissed. No costs. Connected CMP is closed.

rsh

Index : Yes
Internet : Yes

To

The Second Additional
District Munsif
District Munsif Court

□